

D.U.P. NO. 97-3

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

BOROUGH OF DUNELLEN,

Respondent,

-and-

Docket No. CO-96-244

PBA LOCAL 146,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses certain facts alleged in this charge which challenge an employer's right to determine whether an employee is fit for duty and able to work. Additionally, the Director dismisses other allegations challenging the Borough's right to bar the use of answering machines. However, the Director issues a Complaint and Notice of Hearing on other allegations involving the Borough's establishment and application of a sick leave policy.

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Appearances:

For the Respondent,
Ruderman & Glickman, attorneys
(Mark S. Ruderman, of counsel)

For the Charging Party,
Klausner & Hunter, attorneys
(Stephen B. Hunter, of counsel)

DECISION

On February 26, 1996, the PBA Local 146 (PBA) filed an unfair practice charge against the Borough of Dunellen alleging violations of subsections 5.4(a)(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The PBA

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

alleges that on October 23, 1995, the Borough unilaterally established a sick leave policy changing procedures affecting employees on sick leave and workers compensation leave. The charge includes the following allegations:

5 a. Officers were advised that they could be required to utilize sick leave even if they reported to work and were otherwise cleared for work by their physicians;

5 b. Officers utilizing sick leave were advised that there could be a series of conditions that had to be satisfied "after the fact" as a condition for crediting each officer's leave as sick leave;

5 c. Officers were called at their homes at all hours of the day or night to purportedly check on the validity of their absences even in instances in which the employers were aware that the officer and his family would be asleep;

5 d. Officers were prohibited from utilizing answering machines at their homes, again regardless of the hour of the day or night, in instances in which they were out of work pursuant to a service connected disabling injury or an illness;

5 e. Officers were advised that if they were either on sick leave or workers compensation leave, they had to remain at home at all times regardless of the nature of their illness or injury unless they were reporting to their physician's office, voting or attending religious services.

The PBA asserts that these changes impact the employees in an onerous, arbitrary manner and are violative of the Act.

The Borough asserts that the implementation of a sick leave verification policy is a managerial prerogative. Further, the Borough states that the PBA never requested negotiations regarding

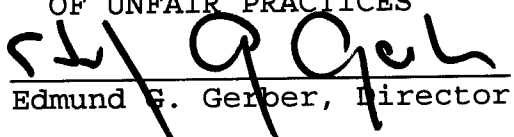
severable issues resulting from the policy. Therefore, the Borough seeks dismissal of the charge.

In Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95, 96 (¶13039 1982), we held that a public employer has a managerial right to implement reasonable measures to verify employee illness or disability. This principle also extends to an employer's right to verify that an employee's illness or disability has abated by the time he reports back for duty. See Bor. of Park Ridge, P.E.R.C. No. 87-55, 12 NJPER 851, 853 (¶17328 1986); Bor. of Sayreville, P.E.R.C. No. 87-2, 12 NJPER 597 (¶17223 1986); City of Elizabeth, P.E.R.C. No. 84-75, 10 NJPER 39 (¶15022 1983), aff'd 198 N.J. Super. 382 (App. Div. 1985); N.J.A.C. 4:1-17.18(d) (allowing a civil service employer to require an employee returning from sick leave to be examined by a physician to determine fitness for duty); cf. City of Jersey City, P.E.R.C. No. 88-33, 13 NJPER 764 (¶18290 1987). We further held in Piscataway that while "the mere establishment of a verification policy is the prerogative of the employer, the application of the policy may be subject to contractual grievance procedures." 8 NJPER at 96. A matter predominantly involves the application rather than the establishment of a sick leave verification policy when: the employer has formulated the policy; the employee has complied with the policy; and the employer has then decided to withhold sick leave benefits from the particular employee.

The PBA's allegation in 5a. is non-negotiable because it challenges an employer's right to determine whether an employee is able to work and fit for duty. Accordingly, I dismiss the allegation in 5a. Borough of Park Ridge.

Additionally, the Commission has held that a public employer has a prerogative to establish a sick leave verification program which includes home visits. City of E. Orange, P.E.R.C. No. 84-68, 10 NJPER 25 (¶15015 1983); Piscataway Bd. of Ed. Since home visits are permissible, I refused to issue a complaint on an allegation raised by a PBA in Linden involving the prohibition of using answering machines by employees on sick leave, because a phone call is less intrusive than a visit. City of Linden, D.U.P. No. 92-24, 18 NJPER 328 (¶23143 1992). Accordingly, I dismiss allegation 5d. raised by the PBA which challenges the Borough's right to bar the use of answering machines. I will not dismiss the allegation in 5c.^{2/}

I will issue a Complaint and Notice of Hearing on the remaining facts alleged in the charge. N.J.A.C. 19:14-2.1. The allegations raised in 5a. and 5d. are dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund F. Gerber, Director

DATED: July 15, 1996
Trenton, New Jersey

^{2/} These allegations raise an issue as to whether the employer's verification of sick leave was done in such an arbitrary and burdensome manner it ceased to be a managerial prerogative.